Because the wording of environmental or safety rules can cost industry millions of dollars, 64 trade groups successfully lobbied a Senate committee to drop a similar provision last week. The

administration threatened to veto any bill that blocks financing.
"This strikes me as an inter-branch conflict," said Cornelius Kerwin, an expert on the regulatory process and interim president of American University. "Is rulemaking and its progeny, guidance, an extension of the legislative process, or can the president manage but not direct it? Many presidents say, 'Why not control it?' " Kerwin, director of the university's center for the study of rulemaking, said of the Bush executive order: "If it doesn't appear the intent is management but policy direction, then that's where the struggle ensues."
Bush's order, which is to take effect a week from today, would require agencies to consider free-market solutions to problems before issuing rules. It also reins in agencies' practice of issuing informal guidance, which can have the same effect as regulations. Further, the order calls for "regulatory policy officers," who must be presidential appointees, to be given authority to set an agency's agenda.
"It's good news that the Senate dropped the effort to block interagency review of guidance documents," said Paul Noe, a former top aide in the White House office that reviews regulations. "There is broad support for better management and accountability" in the process, he said, citing large and small business, farmers, schools and state and local governments.
Noe is vice president of regulatory affairs for the GMA/FPA, an association for grocery manufacturers and the food products industry.

Fighting for the Right to the Rules
A July 12 letter to Senate Appropriations Committee leaders, organized by the U.S. Chamber of Commerce, was signed by trade groups covering a wide range of industries, including aerospace, energy, baking, cabinetry, oil seed, pressure-sensitive tape, and shooting sports.
"I am concerned the order shifts power to political operatives and how they can kill or change regulations based on political considerations, entirely in secret," Rep. Brad Miller, chairman of the House Science and Technology subcommittee on investigations and oversight, said in an interview.
Miller (D-N.C.) and other critics said they feared the White House would pick regulatory policy officers who would disregard scientific data used to support rules.
Miller held two oversight hearings on the order and sponsored an amendment to a House appropriations bill that was approved June 27 to block funding to implement the order at the Office of Management and Budget, which reviews proposed regulations.

Sally Katzen, former head of OMB's regulatory-review office under President Bill Clinton, was critical of the Bush order at a third hearing, before the House Judiciary subcommittee on commercial and administrative law in February. "This is not good government," she said.
"It over-politicizes the rulemaking system, it gives the White House unaccountable power over the agencies and it raises some constitutional issues," Gary Bass, executive director of OMB Watch, said in an interview. The nonprofit group monitors executive-branch actions.
There is widespread agreement that every administration tries to manage regulatory policy and that politics comes into play. Bass said this administration has put political considerations first, ignoring relevant data and scientific research, which should be an essential element of any regulatory decision.
The Bush administration was active, even before the new executive order, in reducing the clout of agency rulemakers. It issued "bulletins" that required agencies to get their rules reviewed by outside experts, subject their data to public challenge and quantify the risks that rulemaking addresses.
Controlling the White House and Congress until this year let the Republicans shape what starts or stops a rule and whether it is issued in a timely manner. The new executive order inflamed some public interest groups and Democrats, who now have the majority in Congress.

Fighting for the Right to the Rules
Susan E. Dudley, who was appointed by Bush to head OMB's regulatory-review office under a recess appointment in April, said the executive order's provisions are misunderstood.
Having a high-level, readily identifiable regulatory policy officer makes the rulemaking process more transparent, not less, Dudley said. That's because someone can be held accountable for a decision.
The OMB's Web site lists which positions the new regulatory policy officers hold but not their names. The OMB did supply the 29 names to Bloomberg News. They include deputy Cabinet secretaries, general counsels and other senior officials.
"It's surprising to us someone would think it was a bad idea, when it's a good government measure," Dudley said of the executive order.
Cindy Skrzycki is a regulatory columnist for Bloomberg News. She can reached atcskrzycki@bloomberg.net.